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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,207

06/09/2005

Declan P Kelly

NL021342

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06/04/2008

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

NGUYEN, MY XUAN

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

06/04/2008

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/538,207
Filing Date: June 09, 2005
Appellant(s): KELLY ET AL.

Robert M. McDermott
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/22/2008 appealing from the Office action mailed 01/23/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-32 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Publication 2002/0156909 A1 (Harrington).

Regarding claims 1, 7, 15, 16, 26 and 28, Harrington discloses the claimed:

a portable wireless device (i.e., client device, Fig. 8 Element 806, ¶s [0016] & [0034]), the wireless device having a media drive (i.e., Flash drive may be loaded from a CD-Rom, a floppy disk, or from any memory element connected to the client device, ¶s [0014], [0043] & [0059], it should be noted a variety of memory elements are listed in ¶ [0014] including CD-ROM, DVD, CD, or memory stick) and an application (i.e., Flash player, ¶s [0020] & [0034]) that reads and plays back content from a medium inserted in the media drive (¶s [0014], [0043] & [0059]);

a service that communicates with the wireless device (i.e., client device, Fig. 1 Element 112) via a wireless network (i.e., network, Fig. 1 Element 120), the service providing control commands to the application program for controlling playback of content from the medium (i.e., server-side control of a Flash movie playing on a client device, ¶ [0015]) when inserted in the media drive (i.e., Flash movie may be loaded from a CD-Rom, a floppy disk, or from any memory element connected to the client device, ¶s [0014], [0043] & [0059]).

Regarding claim 2, Harrington discloses the claimed wireless device is a mobile phone (i.e., wireless telephone, ¶ [0042]).

Regarding claims 3, 8 and 27, Harrington discloses the claimed media drive is one selected from the group of optical disc drive, magnetic disc drive and a flash memory card interface (i.e., Flash movie may be loaded from a CD-Rom, a floppy disk, or from any memory element connected to the client device, ¶s [0014], [0043] & [0059]).

Regarding claims 4 and 17, Harrington discloses the claimed service is provided from a website that interfaces with the wireless network via the Internet (¶ [0014]).

Regarding claims 5, 10, 19, 22 and 29, Harrington discloses the claimed control commands provided by the service control at least one of the selection and order of content played back (i.e., server-side control of a Flash movie playing on a client device,

¶ [0015]) from the medium (i.e., Flash movie may be loaded from a CD-Rom, a floppy disk, or from any memory element connected to the client device, ¶s [0014], [0043] & [0059]).

Regarding claims 6, 11-14, 23, 31 and 32, Harrington discloses the claimed service downloads advertisements to the wireless device and also provides control commands to the application to play the advertisements along with the playback of content from the medium (i.e., advertising is created and delivered in a targeted and individualized manner and allows customers to make more informed choices and spontaneous choices, ¶ [0017]).

Regarding claim 9, Harrington discloses the claimed medium contains at least one of audio content and video content (i.e., Flash movies, ¶ [0043]).

Regarding claims 18 and 30, Harrington discloses the claimed control commands are generated using an identification of the content of the medium received by the services from the portable wireless device (i.e., playlist timeline and associated commands are related to a programming signal in order to synchronize the Flash movie on a client device with the programming signal, ¶ [0053]).

Regarding claims 20, 21, 24 and 25, Harrington discloses the claimed control commands are generated using an identification of the user received by the service

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from the portable wireless device (i.e., a user may *subscribe* to a stock-ticker data feed,

¶ [0071]).

(10) Response to Argument

Response to Appellant's arguments regarding claims 1-6, 7-14, 15-25, 26-27, and 28-32

<p>Appellant argues "Harrington does not teach a portable wireless device that includes a media drive..." and that "the flash movie being accessed from a source that is remote from the client device..."</p>	<p>Harrington discloses a client device (Fig. 8 Element 806) wherein a Flash movie may be loaded from a CD-Rom, a floppy disk, or from any memory element connected to the client device (¶s [0014], [0043] & [0059]), which is understood as the claimed "...wireless device having a media drive...".</p> <p>The disclosed CD-Rom, floppy disk, or any other memory elements are examples of <i>mediums</i>. Since an <i>application</i> (i.e., Flash movie) is loaded from a suitable <i>medium</i> that is connected the client device, it is inherently implied the client device has a suitable media drive to be able to load an application from the suitable medium. The Computer 806 as shown in Figure 8 clearly shows media drives within the computer.</p> <p>Harrington further discloses a client device</p>
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	<p>being a PDA (i.e., a Palm™ device which is known to have a media drive, ¶ [0069] lines 13 & 14). Therefore it is understood Harrington discloses the claimed “...wireless device having a media drive...”.</p>
<p>Appellant argues “...Harrington does not teach a service that provides control commands for controlling playback of content from the medium when inserted in the media drive.”</p>	<p>Harrington discloses a service that communicates with the wireless device (i.e., client device, Fig. 1 Element 112) via a wireless network (i.e., network, Fig. 1 Element 120), the service providing control commands to the application program for controlling playback of content from the medium (i.e., server-side control of a Flash movie playing on a client device, ¶ [0015]) when inserted in the media drive (i.e., Flash movie may be loaded from a CD-Rom, a floppy disk, or from any memory element connected to the client device, ¶s [0014], [0043] & [0059]).</p>
<p>Appellant argues “...that a media device</p>	<p>Figure 8 Elements 806 suggest</p>

<p>that is 'connected' to a client device does not correspond to a media drive that is included in the client device" and contends that "...the use of the term "downloaded" with reference to media devices that are 'connected' to the client device...implies that the media devices are not included within the client device."</p> <p>"... 'downloading' is always associated with the transfer of information from one device to another device..."</p>	<p>Harrington's definition of 'connected' does not exclude a media device being within a client device. Of the three client devices shown the Computer 806 in particular shows media devices that are 'connected' within. Appellant's contention that a device being 'connected' implies that the media devices are not included within the client device is unwarranted.</p> <p>Furthermore though Harrington uses the terminology "downloaded" in reference to media devices 'connected' to client devices, it should be also noted Harrington discloses media (i.e., Flash movie) being loaded from any memory element connected to the client device (§ [0059] lines 11-13). Since Harrington uses the terms "downloaded" and "loaded" interchangeably appellant's contention of the conventional use of the term "downloaded" is unwarranted.</p>
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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/My X Nguyen/

Examiner, Art Unit 2617

06/02/2008

Conferees:

/George Eng/

Supervisory Patent Examiner, Art Unit 2617

/Duc Nguyen/

Supervisory Patent Examiner, Art Unit 2617